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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M. L., a Person Coming Under the
Juvenile Court Law.

B208676

(Los Angeles County
Super. Ct. No. CK72748)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

NICOLE B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Valerie Lynn Skeba, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant Nicole B. (mother) challenges a June 17, 2008 dispositional order removing her son, M. L., from her custody and placing him in foster care. Because the order is supported by substantial evidence, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Three-year-old M. L. was detained and taken into protective custody on April 23, 2008. The juvenile dependency petition, filed April 28, 2008, alleged that M. L. was suffering from a broken arm, a frontal hematoma, contusions to his head, swelling and bruising to his left arm, and bruises and abrasions to his face, neck, chest, penis, scrotum, and legs. It alleged that M. L.'s father, Adam L. (father), was incarcerated, and that mother's companion, Hector P. (Hector), abused mother in M. L.'s presence. It further alleged that M. L. was within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code, section 300, subdivisions (a) (child has suffered or is at substantial risk of suffering serious physical harm), (b) (failure to protect), (e) (serious physical abuse of a child under five), (g) (no provision for support), and (i) (child has suffered acts of cruelty).¹

The detention report stated that the Department of Children and Family Services (DCFS) had received a report from an unidentified caller on April 23, 2008, that Hector had physically and emotionally abused M. L. The caller said that M. L. had awakened screaming in pain and told mother that Hector had "twisted his arm." Mother was unable to take M. L. to the hospital immediately because Hector had locked mother and M. L. in his home. The caller reported that M. L. had a broken arm and bruises on his head and body.

A children's social worker (CSW) interviewed mother at the hospital. According to the detention report, Mother told the CSW that she had tried to take M. L. to see a doctor, but she could not open the door to the home because it had been padlocked from

¹ All further statutory references are to the Welfare and Institutions Code.

the outside. She explained that she and M. L. were living with Hector in a converted garage with no doors. She waited until Hector returned home and then confronted him. Mother said Hector hit and kicked her, pulled her hair, and threw her to the floor. When she threatened to call the police, Hector fled. Mother waited to be sure Hector was gone and then went to a friend's house and contacted law enforcement. Mother told the CSW that she was upset that she put herself and her son in a situation where they could be harmed. Mother also stated that she was four months pregnant with Hector's child, and that she and Hector had discussed sharing their lives together. She acknowledged one prior instance of domestic violence when Hector threw something at her shortly after they began to date. She said that Hector hit her several times while she was locked in his home, but she was afraid to fight back because she did not want to risk her pregnancy. She reported that M. L.'s father has been incarcerated for two years on murder and robbery charges.

The police report attached to the detention report stated that mother began dating Hector approximately five months earlier and was four and a half months pregnant with his child. She moved in with Hector on April 11, 2008, 11 days before the incident. When officers interviewed mother, she "talked about being chained and pad locked [*sic*] in the residence as if it were a common everyday occurrence." When officers asked whether this was the first time that Hector had hurt M. L., mother stated that she had observed red marks around his throat, back, and genital area on April 19 or 20. She asked Hector what had happened and threatened to leave him. In response, Hector began padlocking the front door when he went to work. Mother said she was unable to call for help because there was no telephone inside the home and her prepaid cell phone had run out of minutes.

At the initial detention hearing on April 28, mother told the court that she had left Hector and was living with her parents.² She stated that she did not want M. L. to be

² It was later determined that the persons whom mother referred to as her parents were not her biological parents, but instead were informal foster parents with whom mother had lived during her teenage years.

released to her in her parents' home because Hector knew where they lived, but she asked that M. L. be placed temporarily with a relative and that DCFS have discretion to release him to her as soon as she was able to find a homeless shelter that would accept her and M. L.

The juvenile court found that DCFS had made a prima facie showing that substantial danger existed to M. L.'s physical and emotional health, and that M. L. could not reasonably be protected without being removed from his parents' custody. Accordingly, the court ordered M. L. detained in shelter care and granted DCFS permission to place him with any appropriate relative. Mother was granted unmonitored visits in a public setting, and Hector was ordered not to be present during mother's visits.

Mother sought a temporary restraining order against Hector on April 28, which the court granted. The court granted a six-month restraining order against Hector on June 4, 2008.

DCFS filed an addendum report on June 17, 2008. Among other things, it reported as follows: (1) M. L.'s doctor believed that mother's account of the altercation with Hector did not explain all of the child's injuries. She stated that "This really seemed like a case where there's lots of holes in the history," and she believed that mother was afraid of something. (2) M. L.'s paternal grandmother reported that mother (and sometimes M. L.) began staying out on the weekends in January 2008. Paternal grandmother noticed bruising on M. L.'s shins whenever he returned from a weekend with mother. She also observed that M. L. was not as playful as he had been in the past. (3) Hector stated that mother "has been texting him recently that she's sorry." (4) Hector's mother reported that she had been concerned about M. L. because she had observed that he frequently had bruises or other injuries on his face or body. (5) An officer with the LAPD Abused Child Unit stated that she was concerned about "mother's inconsistent stories and her apparent disconnect." (6) The CSW reported that mother was not aware that domestic violence can include throwing objects and isolating the victim from family and friends, as by keeping her captive and taking away her cell phone. (7) Mother reported that she had had a normal childhood and she identified Elizabeth M.

as her mother. DCFS later learned that Elizabeth M. was not mother's biological mother, but instead had been her informal foster mother during her teenage years. DCFS also learned that mother had been removed from her biological mother's care as a child following repeated reports of physical and sexual abuse. When mother was asked about these reports, she stated that she could not remember.

The addendum report noted that mother's statements to the police, hospital personnel, and DCFS were inconsistent in significant ways, including whether mother was aware of red marks on M. L.'s body, why mother was unable to summon medical attention for M. L., who mother's biological parents are, and whether mother had had contact with DCFS before the April incident. With regard to disposition, the report stated as follows: "Mother described her childhood as normal, and misrepresented who actually were her parents until confronted by DCFS. When asked if anything traumatic happened during her childhood, mother only described going back and forth between homes, whereas prior DCFS history and collateral contacts report traumas including separation from her primary attachment figure when she was a young child, physical abuse, and sexual abuse. In addition, mother failed to recognize 'red flags' about [father's] violence, and she failed to recognize 'red flags' about [Hector's] violence and control." DCFS therefore recommended that M. L. be declared a dependent of the court, that he remain placed outside the home, that mother be provided family reunification services, and that mother participate in a psychological assessment and domestic violence counseling and education.

The juvenile court held a jurisdictional and dispositional hearing on June 17. At the hearing, mother offered into evidence a letter indicating that she was participating in a support group for domestic violence victims, but she did not call any witnesses. The court dismissed counts (a)(2), (g)(1), and (i)(1), and sustained counts (a)(1) (as amended), (b)(1), (b)(2), (b)(3), and (e)(1), explaining as follows: "I know mother has had a very difficult time, and I know she loves [M. L.] a great deal. But I think she has some things she needs to address in her own life. And once those things are addressed, then we can

return [M. L.] to her. But we need to know everything that we can in order to help mother the most.”

The court found by clear and convincing evidence that substantial danger existed to M. L.’s physical health and there were no reasonable means to protect him without removing him from his parents’ custody. Further, the court found that reasonable efforts had been made to prevent or eliminate the need for removing M. L. from his parents. The court thus declared M. L. a dependent of the court and ordered him removed from mother’s custody and placed with DCFS. The court ordered that family reunification services be provided for mother and that she participate in parenting classes and individual counseling to address domestic violence and childhood abuse issues.

On June 18, mother filed a timely notice of appeal of the “06-17-08 findings and orders sustaining the petition filed 04-28-08 as amended.”

ISSUES ON APPEAL

Mother contends on appeal that there was insufficient evidence of risk of harm to M. L. to justify removing him from her custody. She requests that the court reverse the juvenile court’s order removing M. L. from her physical custody and order him returned to her with proper services and supervision.³ DCFS responds: (1) mother forfeited her right to challenge the disposition order by not including it in her notice of appeal; (2) mother forfeited her right to challenge the order removing M. L. from her custody by submitting on the social worker’s evaluation and not introducing any evidence or offering any argument or objection; and (3) the order removing M. L. from mother’s custody is supported by substantial evidence.

³ Mother’s notice of appeal also embraced the juvenile court’s jurisdictional determination, but she does not pursue this issue in her appellant’s opening brief. The issue therefore is forfeited. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 840 [arguments not raised in the opening brief are forfeited on appeal].)

DISCUSSION

I. Adequacy of the Notice of Appeal and Preservation of Appellate Issues

Mother's notice of appeal is from the "06-17-08 findings and orders sustaining the petition filed 04-28-08 as amended." DCFS contends that, as written, it embraces only the findings and orders sustaining the dependency petition, not the disposition order removing M. L. from her custody. We do not agree. In view of the preference for broad construction of notices of appeal in general and specifically in dependency matters (e.g., Cal. Rules of Court, rule 8.100(a)(2); *In re Madison W.* (2006) 141 Cal.App.4th 1447, 1450-1451; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112), we construe mother's notice of appeal to include both the jurisdictional findings and the dispositional orders.

We also reject DCFS's contention that mother forfeited her right to challenge the order removing M. L. from her custody by submitting on the social worker's evaluation and not introducing any evidence or offering any argument or objection. "In a dependency case, when a parent submits or acquiesces on a particular record, 'the court must nevertheless weigh evidence, make appropriate evidentiary findings and apply relevant law to determine whether the case has been proved.' (*In re Richard K.* [(1994)] 25 Cal.App.4th [580,] 589.) Even if the parent does not contest the state of the evidence, he or she preserves the right to challenge it as insufficient to support a particular legal conclusion." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 464; see also *In re N. S.* (2002) 97 Cal.App.4th 167, 170 ["Although a parent who submits on a particular report or record acquiesces to the evidence, the parent preserves the right to challenge the sufficiency of the evidence to support a particular legal conclusion"].) Thus, mother did not forfeit her right to challenge the propriety of the juvenile court's orders by failing to object to DCFS's report or recommendations.

II. Substantial Evidence Supports the Trial Court's Disposition Order

Mother contends that there was insufficient evidence of risk of harm to M. L. to justify removing him from her custody. For the reasons that follow, we do not agree.

The governing statute, section 361, subdivision (c), provides that if a child has been declared a dependent of the juvenile court, he shall be removed from the home in which he resides if there is clear and convincing evidence of a substantial danger to his physical health, safety, protection, or physical or emotional well-being and there are no reasonable means by which he can be protected without removal. (E.g., *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288; *In re Silvia R.* (2008) 159 Cal.App.4th 337, 351.) In reviewing the disposition on appeal, we look to see if substantial evidence, contradicted or uncontradicted, supports it. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) To make this determination, “we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*Ibid.*)

In the present case, there is substantial evidence to support the dispositional order. It is undisputed that M. L. suffered serious physical injury, including a broken arm, as a result of a beating by mother’s live-in boyfriend. Mother admitted that there had been a prior incident of domestic violence when Hector threw something at her soon after they began to date, but she nonetheless chose to move herself and her son into his home. Further, there was evidence from which the court could have concluded that M. L. had been physically abused by Hector prior to April 22, including (1) mother’s statement that on April 19 or 20 she had observed red marks around M. L.’s throat, back, and genital area, (2) paternal grandmother’s testimony that beginning in January 2008, she noticed bruising on M. L.’s shins whenever he returned home from a weekend with mother and Hector, (3) Hector’s mother’s testimony that M. L. frequently had bruises and other injuries on his face or body, and (4) M. L.’s doctor’s statement that in her opinion, mother’s account of the altercation with Hector did not explain all of the child’s injuries and there seemed to be “lots of holes in the history.” From this evidence, the trial court reasonably concluded that mother did not act in a reasonably prompt manner to protect her son from Hector’s violence. Further, although mother said that she was not able to contact authorities any earlier than she did because Hector had locked her in his residence

and taken away her cell phone, the trial court was not required to credit her testimony. Finally, there was evidence, albeit disputed, that mother attempted to contact Hector, either personally or by telephone, after the April 22 beating. Taken together, this constitutes substantial evidence of danger to M. L.'s physical health, safety, protection, and physical or emotional well-being.

Further, we note that on the record before us, there is no evidence that mother had secured housing that would have made it possible for M. L. to have been placed with her at the time of the disposition hearing. Prior to the April 22 incident, she and M. L. had been living with Hector. On April 28, mother told the court that she had moved in with maternal grandparents and was looking for housing at a homeless shelter that would accept her and M. L. She never advised the court that she had found such housing. Further, M. L. could not have been placed with mother in maternal grandparents' home because both maternal grandparents had criminal records. Accordingly, there was substantial evidence to support the trial court's conclusion that there were not "reasonable means" by which M. L. could have been protected without removal from mother's custody.

Mother suggests that *In re Steve W.* (1990) 217 Cal.App.3d 10 supports her contention that removal was inappropriate under the facts of this case. We do not agree. In *Steve W.*, the child was removed from his mother's care after his father beat his half-brother to death. The Court of Appeal reversed, finding no substantial evidence that the child was in continuing danger. It noted that mother had assisted with father's prosecution and had stated that she wanted nothing further to do with him, and that father had been sentenced to prison for six years. Thus, the court concluded that "all of the circumstances here indicate that [mother] will not resume her relationship with [father] or allow him access to the child." (*Id.* at p. 22.) Further, mother had begun counseling, was living in an adequate apartment, and was self-supporting. (*Ibid.*) Here, in contrast, Hector is not in custody and there is evidence that mother has attempted to contact him. Further, mother has not begun counseling and there is no evidence that she has secured

appropriate housing for herself and M. L. Thus, *Steve W.* applies to a set of facts not present in this case.

In re Nicole B. (1979) 93 Cal.App.3d 874 also does not assist mother. There, the child was declared a dependent and was placed with her mother. The mother appealed the jurisdictional finding only. (*Id.* at pp. 876-877.) The Court of Appeal affirmed, concluding that the trial court had not abused its discretion by asserting jurisdiction over the child. (*Id.* at p. 882.) The court did not consider the propriety of the dispositional order placing the child with mother because that issue was not before it on appeal. It thus is irrelevant to our analysis here.

DISPOSITION

The dispositional order is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.